STATE OF MAINE
PUBLIC UTILTIIES COMMISSION

Docket No. 2002-698

May 6, 2003

PUBLIC UTILITES COMMISSION
Amendments to Section 11 of Chapter 81:
Residential Utility Service Standards
For Credit and Collection Programs

ORDER ADOPTING
AMENDED RULE

WELCH, Chairman; NUGENT AND DIAMOND, Commissioners

I. SUMMARY

In this Notice, we amend section 11 of Chapter 81. The amendment removes section 11(D)(2) and adds text to section 11(D)(1) to eliminate the cumulative limit to the duration of a certified medical emergency. These changes clarify that a medical emergency certification may be renewed as long as the medical emergency exists and eliminates an inconsistency between sections 11(D)(2) and 11(G) by removing the 90-day limit for medical emergencies. This will require utilities to obtain an exemption from the Commission any time they wish to disconnect a customer with a certified medical emergency.

II. BACKGROUND

By Notice of Rulemaking dated November 26, 2002, we initiated a limited rulemaking to amend section 11 of Chapter 81. We provided Notice of the proposed rulemaking through the secretary of state's Notice process and to all gas, water and electric utilities, as well as to the service list for persons' interested in all rulemakings before the Commission. We accepted written comments on the proposed amendment until January 6, 2003. No parties requested a public hearing and one was not held. Central Maine Power Company (CMP), Bangor-Hydro-Electric (BHE), and the Berwick Water District (BWD) filed written comments on the proposed amendment.

III. DISCUSSION OF COMMENTS

The commenters did not limit their comments to the proposed rule revisions; consequently, the comments are grouped by subject area.

A. General Comments.

CMP and BHE concur with the Commission's general philosophy set forth in this amendment, which is that "no person with a medical emergency that is certified by a physician be disconnected, regardless of the duration of the medical emergency, without

careful examination by the Commission." CMP believes that an indefinite right to avoid disconnection for non-payment is an extreme right that should be available in only very limited circumstances. CMP suggests that the Commission impose stricter requirements within its rule to ensure that this exception applies only to those customers with a genuine medical emergency, and, as such, is fair to all customers.

B. Medical Emergency Definition/Standard.

CMP suggests that the Commission clarify the medical standard that must be met before a utility is prevented from disconnecting or refusing to reconnect service. Section 11(A) sets the medical standard as a customer who is "seriously ill or has a medical condition that will be seriously aggravated by lack of utility service." CMP states that this standard is somewhat vague and over-expansive. It is vague because there are many medical conditions that are not serious that could arguably be aggravated by a lack of utility service. It is over-expansive because any medical condition that could be aided by an appliance could arguably meet this standard. This could include everything from asthma to a bad back. CMP suggests a standard such as "a medical emergency or a serious illness that will be aggravated by lack of utility service." CMP claims that such a standard is superior because it requires an "illness" rather than the more imprecise term "condition."

BHE notes that Chapter 81 does not contain a definition of the term "medical emergency." The Company believes this to be the root problem that exists with Section 11. The current standard prevents disconnection if a registered physician certifies a customer "to be seriously ill or has a medical condition that will be seriously aggravated by lack of utility service." Under this standard, chronic conditions such as asthma, diabetes, sleep apnea, and depression all qualify as medical emergencies. BHE further states that at some point, a medical "emergency" may become a serious medical condition, but by virtue of the passage of time – it will no longer be an emergency. BHE believes the 90-day limit specified in Section 11(D) was originally intended to accommodate genuine emergencies. While deleting Section 11(D) will eliminate a major inconsistency with Chapter 81, its elimination will require utilities to accommodate the "emergency" on a more or less permanent basis. In many cases, after 90 days the condition is no longer an "emergency" but a chronic circumstance for which the customer should have some obligation to seek social assistance.

BHE believes the Commission has an obligation to clarify what constitutes a medical emergency. To this end, BHE suggests the use of a standardized form from the certifying physician. At a minimum, the form should describe the precise medical condition and also state specifically how it would be aggravated by disconnection. The form should inform the physician that there must be a direct and immediate causal connection between the medical condition and the absence of electricity (e.g., the operation of a fetal heart monitor) as opposed to remote and indirect consequences or those which apply to the general population (e.g., we need light to check on the baby).

We agree with CMP and BHE that the term "emergency" causes confusion; however, we do not want to make the term more restrictive regarding the types of

situations for which a medical emergency can be declared. Rather, we find that individuals with chronic medical conditions should not have their utility service disconnected when such a disconnection may seriously aggravate the medical condition. Further, we do not want to make the definition of a "medical emergency" any more restrictive than it currently is in Chapter 81. In fact, we find that the term "emergency" does not convey the actual intent of the rule, which is to prevent the disconnection of individuals with a medical condition, chronic or acute, that would be seriously aggravated by a lack of utility service. Because the term "emergency" is referenced in other areas of the rule and therefore would require additional modifications that we do not wish to make at this time, we choose to retain the term "emergency" in the revised rule. We do this with the understanding, however, that situations for which a "medical emergency" can be declared are not limited to "emergency" situations and include both acute and chronic medical conditions. We plan to initiate a complete rewrite of Chapter 81 in the near future. At that time, we will modify the reference to medical "emergency" so that the rule more accurately describes the situations covered by this exemption.

We also find the phrase "to be seriously ill" used in section 11(A) unnecessary. The term "medical condition," which is also used in section 11(A), subsumes the term "illness," thereby making this language unnecessary. We therefore remove the phrase "to be seriously ill" from section 11(A).

C. Declaration Method.

CMP and BHE suggest that the Commission eliminate the ability for physicians' offices to provide oral certification of a medical emergency or serious illness. Instead, they propose that customers should be required to obtain a written certification signed by the customer's physician. CMP claims that a physician (or someone in his/her office) may see an oral declaration as a less serious matter than something they are required to attest to in writing.

We disagree with CMP and BHE. The current rule allows utilities to require written confirmation of an oral certification of a medical emergency within seven days of the oral declaration. This already accomplishes what CMP and BHE recommend. We do not choose to eliminate a physician's office ability to orally declare a medical emergency. When a customer is under the threat of imminent disconnection, there will most likely be times when a written certification cannot be obtained in a timely manner. We therefore do not want to make it more difficult for customers to prevent the disconnection of their service when a medical emergency exists. We find that the current rule, which allows an oral certification of a medical emergency to later be confirmed by a written certification, strikes an appropriate balance between a customer's right to declare a medical emergency without undue complexity and the utility's right to ensure that the medical condition for which the emergency is declared exists.

D. Certification of a medical emergency.

CMP and BHE recommend that the Commission remove the provision that requires a utility to accept a declaration by an employee or agent acting on behalf of the

physician. CMP claims that a licensed physician, based on his/her sound medical judgment, should make the determination as to whether a medical emergency or serious illness exists. BHE recommends only a physician as defined in Chapter 81, Section 2(O), authorize that certification. BHE further states that written certification from a licensed physician would provide some additional safeguard against possible misrepresentation of medical conditions.

We decline to make the change recommended by CMP and BHE. As stated earlier in this Order, we do not wish to make it more difficult for customers to declare medical emergencies. Restricting the individuals who can certify medical emergencies to "physicians only," is not consistent with this objective. We also find this recommendation to be unreasonable. We can envision situations in which a physician is unavailable to provide the certification within the designated time frame. Allowing an employee or agent acting on behalf of the physician to make the declaration will ensure that certifications are provided in a timely manner. We also do not find that employees or agents of the physician are likely to grant certifications without consulting with the physician, making the change recommended by CMP and BHE unnecessary.

E. Time Frame for Medical Emergency Declaration

CMP and BHE recommend that the three-business day disconnection postponement period in subpart (B) be expanded to five (5) business days to accommodate the requirement for a written certification in all circumstances. Because we declined to adopt CMP and BHE's recommendation that only written certifications be accepted, there is not need to increase the disconnection postponement period to accommodate the written certification.

F. Ability to Pay

CMP recommends that the Commission adopt a provision similar to that in New York's Home Energy Fair Practices Act (N.Y. Pub. Serv. Law § 2), which requires that a customer demonstrate his inability to pay charges for service before a certificate of medical emergency can be renewed. CMP suggests that the Commission include such an "ability to pay" standard as part of its Chapter 81 amendments.

We decline to adopt such a standard. We find that an ability to pay standard would be contrary to the purpose of the medical emergency provision, namely, to prevent a person with medical condition that may be seriously aggravated by a lack of utility service from having that service disconnected for non-payment. The likely reason a customer must declare a medical emergency in the first place is because he cannot pay a sufficient portion of the bill to prevent disconnection. As stated earlier in this Order, it is our position that no person with a medical condition that may be seriously aggravated by a lack of utility service lose such service because of his or her inability to pay. We also find this unnecessary, given the utility's right to require a customer to enter into a payment arrangement for an overdue amount as a condition for renewal of the medical emergency. If the customer refuses to enter a payment arrangement, the utility

may seek permission from the Commission to disconnect the customer's service. We also point out that disconnection is not the only means of collecting moneys owed. This rule does not prevent a utility from initiating collection activities, other than disconnection, against a customer with a medical emergency.

G. Criteria to be used to evaluate a waiver request.

In the Notice of Rulemaking issued in this case, we solicited comments regarding the criteria that should be used to evaluate requests for waivers of the medical emergency provision. This request was made in light of the fact that granting a waiver may jeopardize the safety of the person with the medical emergency, in conflict with the intent of the medical emergency provision. Currently, such exemption requests are governed by the generic Chapter 81 exemption provision in section 14(B).

CMP and BHE stated that the Commission will need to judge each case on its own merits, which may come down to a determination of what impact the disconnection of utility service would have on the customer's medical condition. CMP further stated that the Commission should be more reluctant to allow disconnection of a customer who is dependent upon medical equipment that is electrically operated. CMP also stated that many customers with medical conditions would not pay bills, regardless of their financial ability to do so, if they knew there is no threat of disconnection. Without a possibility of being disconnected, customers have no incentive to seek available sources of financial assistance in paying their utility bills. Therefore, in determining whether to grant an exemption allowing disconnection under Section 14(B), CMP suggests that the Commission should consider the customer's ability to pay, as well as whether the customer has exhausted sources of available assistance in paying the utility bills.

BHE further recommended that the Commission consider the following:

1) The customer's ability to pay based on total household income;

2) Whether the customer has applied for assistance and the status of any pending application(s);

3) The customer's payment history prior to and during the medical emergency period;

4) The existence of medical equipment in the household; and

5) The customer's medical emergency history.

BWD commented that from the standpoint of a water utility requesting a waiver to disconnect a residential customer, the criteria in section 14(B)'s seem to offer little chance that a waiver would *ever* be granted. This is because "the conduct and known financial condition" of such a customer would probably never "pose a clear

danger of substantial losses to the utility."[1] In the situation of a disconnection prevented by a certified medical emergency, the utility should have the option after 90 days of contesting the medical basis of the certification, by obtaining at its own cost a second medical opinion. In its written submission to the Consumer Assistance Division, the utility would be allowed to contest any or all of the medical judgment elements of the certification, that is:

1) That the person is *ill,* or has a *medical condition;*

2) That the illness or medical condition *exists currently;*

3) That, if it is an illness, it is *serious;*

4) That the *lack of the utility's service would aggravate it;* and

5) That the aggravation would be *serious*.

Under the fourth element above, a utility would have the specific option of arguing that although the lack of the utility's service would aggravate the illness or medical condition, there was another way to prevent the aggravation that did not require the utility's customers as a whole to shoulder the burden of the customer in question.

The recommendations made by CMP, BHE, and BWD regarding factors to consider when evaluating requests to waive the medical emergency provision of Chapter 81 are helpful. However, we find that the language in section 14(B) is sufficient. We would likely consider the recommended factors in a waiver request but do not find it necessary to enumerate them in the rule. With regards to BWD's suggestion that utilities be allowed to contest the medical basis of a certification by obtaining, at its own cost, a second medical opinion, we question the value of such an opinion by a physician who has not examined or who is otherwise unfamiliar with the individual with the medical condition and we are unwilling to allow a utility to compel a customer to submit to an additional physical examination or review of his medical records. We therefore reject this suggestion.

IV. AMENDMENT

For the reasons stated above, we amend Chapter 81 to ensure that no person with a medical emergency that is certified by a physician be disconnected, regardless of the duration of the medical emergency, without careful examination by the Commission.

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[1] We agree with BWD that it would be difficult for a utility to meet the section 14(B) criteria for a granting a waiver, i.e., that the customer poses a clear danger of substantial losses to the utility. We plan on considering this issue in the upcoming Chapter 81 and 86 rulemaking.

We therefore revise Chapter 81, section 11(D) to remove the 90-day limit for medical emergencies. The revision eliminates the inconsistency between sections 11(D)(2) and 11(G) by removing the 90-day limit for medical emergencies, thereby clarifying that the exemption referenced in section 11(G) applies to section 11(D). This requires utilities to obtain an exemption from the Commission any time they wish to disconnect a customer with a certified medical emergency.

We also amend section 11(A) by removing the phrase "to be seriously ill." We find that this language is not necessary because the term "medical condition" subsumes the term "illness."

IV. FISCAL AND ECONOMIC EFFECTS

Title 5 M.R.S.A. § 8057-A (1) requires the Commission to assess the fiscal impact of the proposed rule on small business. In the November 26th NOR, we indicated that we expected the fiscal impact of the proposed amendment to be minimal and invited comments on the fiscal impact of the proposed amendment. No parties offered any comments regarding the fiscal impact of the proposed amendment.

Accordingly, we

O R D E R

1. That the attached amendments to Chapter 81, "Residential Utility Service Standards for Credit and Collection Programs" section 11 are hereby adopted;

2. The Administrative Director shall send copies of this Order and the attached rule to:

A. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

B. Executive Director of the Legislative Council, State House Station 115, Augusta, Maine 04333 (20 copies).

C. All electric, gas and water utilities certified to operate in the State of Maine;

D. All persons who have filed with the Commission within the past year a written request for copies of this or any other Notices of Rulemaking;

E. The Office of the Public Advocate;

3. That the Public Information Coordinator shall post a copy of this Order on the Commission's World Wide Web page http:\\www.state.me.us/mpuc.

Dated at Augusta, Maine this 6th day of May, 2003.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing,within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.